

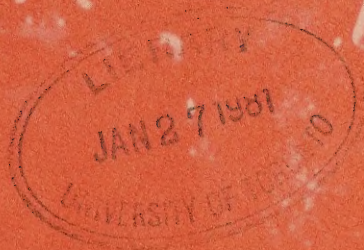
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Government
Publication

Establishing a Committee of Adjustment

A Guideline for Municipal Councils

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Ministry of
Housing

*revised
April 1980*

Operations Control Branch

This guideline has been prepared for information purposes only. The following material is accurate at the time of publication, but is subject to change. For exact reference, please refer to current copy of The Planning Act and for any legal questions, consult your solicitor.

1. Powers of a Committee of Adjustment

When a municipality passes a zoning bylaw for the first time the municipal council may consider appointing a committee of adjustment. Under section 42 of The Planning Act, a committee of adjustment has certain powers:

Powers of committee,

general

42(1) The committee of adjustment upon the application of the owner of any land, building or structure affected by any bylaw that implements an official plan or is passed under section 35, or a predecessor of such section, or any person authorized in writing by the owner, may notwithstanding any other Act, authorize such minor variance from the provisions of the bylaw, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, provided that in the opinion of the committee the general intent and purpose of the bylaw and of the official plan, if any, are maintained.

special

- (2) In addition to its powers under subsection 1, the committee, upon any such application,
- (a) where any land, building or structure, on the day the bylaw was passed, was used for a purpose prohibited by bylaw and such use has continued until the date of the application to the committee, may permit,
 - (i) the enlargement or extension of the building or structure provided that the land, building or structure continues to be used in the same manner and for the same purpose as it was used on the day the bylaw was passed, and provided that no permission may be given to enlarge or extend the building or structure beyond the limits of the land owned and used in connection therewith on the day the bylaw was passed, or
 - (ii) the use of such land, building or structure for a purpose that, in the opinion of the committee, is similar to the purpose for which it was used on the day the bylaw was passed or is more compatible with the use permitted by the bylaw than the purpose for which it was used on the day the bylaw was passed, provided that the land, building or structure continues to be used in the same manner and for the same purpose as is authorized by the decision of the committee; or
 - (b) where the uses of land, buildings or structures permitted in the bylaw are defined in general terms, may permit the use of any land, building or structure for any purpose that, in the opinion of the committee, conforms with the uses permitted in the bylaw.

power of committee to give consent

- (3) In addition to its powers under subsections 1 and 2 and subject to section 30, the committee, upon the application of the owner of any land or any person authorized in writing by such owner, may, notwithstanding any other Act, give a consent as mentioned in section 29, provided that the committee is satisfied that a plan of subdivision under section 33 of the land described in the application is not necessary for the proper and orderly development of the municipality.

the
consent
authority

Not all committees can assume the power to grant consents. If a municipality has an official plan approved after December 31, 1973, the committee of adjustment cannot grant consents [*Section 31[1] of The Planning Act*]. Furthermore, most of the acts for regional, district, and metropolitan municipalities and restructured counties state that local committees cannot consider consent applications.

2. The advantages of having a Committee of Adjustment

It is not mandatory to establish a committee of adjustment. However, a committee can ease the problems of administering municipal zoning bylaws.

time
saving

Municipal council can pass zoning bylaw amendments for proposals that do not comply with the bylaw. However, there are advantages to having a separate body to consider minor changes to the bylaw for specific proposals. First of all, zoning bylaw amendments need Ontario Municipal Board approval. Minor variances approved by a committee of adjustment do not. It may be quicker and less expensive to go through a committee of adjustment.

detailed
evaluation

Secondly, the municipal council has many responsibilities and may not have the time to evaluate these minor changes fully. It may be preferable to have a separate committee who can afford the time to do a detailed evaluation of each application.

3. Establishing a Committee of Adjustment

the
statutory
requirements

Section 41 of The Planning Act contains the statutory provisions for appointing a committee of adjustment. Some of the provisions contained in section 41 are summarized below for your information:

- The municipality must have a zoning bylaw before council can establish a committee of adjustment. This bylaw must be passed by council [*Section 41[1]*]. The Planning Act allows the committee to be established before the bylaw receives OMB approval. To avoid problems it is preferable to establish the committee after the bylaw receives OMB approval.
- The municipal council must pass a bylaw to establish a committee of adjustment (see sample constituting bylaw). Council also appoints members to the committee in this bylaw [*Section 41[1]*].
- The council must appoint at least three members to the committee [*Section 41[1]*].
- Members of council, employees of the municipality, or employees of a local board are not eligible for committee membership. "Employee" does not include a teacher employed by a school board [*Section 41[2] and 41[3]*]. Planning board members are eligible if they are not on council.
- Once the bylaw is passed, the municipal clerk must forward a certified copy by registered mail to the Minister of Housing at Queen's Park, Toronto, where a record of new committees is kept. The bylaw does not come into effect until 30 days after it has been sent [*Section 41[1a]*].
- Committee members are appointed for three years. All appointments are made by bylaw. In the first appointing bylaw, council decides which members shall serve for one year; which for two; and which for the full three years. The aim is to have only one-third of the membership up for reappointment in any given year [*Section 41[4]*]. Only the first appointing bylaw must be sent to the Minister of Housing.

**the
consent
authority**

- Committee members are eligible for reappointment. Members must hold office until their successors are appointed and where a member cannot complete his term, the council appoints a member for the unexpired portion of the term [Section 41[5]].

A committee of adjustment eligible to grant consents has this authority once the committee is established. Council can decide that it does not want the committee to handle consent applications. Such applications are then made to a land division committee which is a committee established at the regional or county level.

Council can transfer consent authority at any time to the Land Division Committee by passing a bylaw in accordance with sections 30(4) and 30(5) of The Planning Act. The following procedure must be used:

The municipal clerk must send certified copies of the bylaw by registered mail no later than five days after the bylaw has been passed to:

- The secretary-treasurer of the committee of adjustment
- The secretary-treasurer of the land division committee
- The Minister of Housing

Ten days after the bylaw has been passed, the committee of adjustment has no further jurisdiction to grant consents and applications for consent must be made to the land division committee.

**funds for
the operation
of the
committee**

Committees have a source of revenue to help defray operating expenses. Section 42(6) of The Planning Act states that committees may charge an application fee. That fee cannot exceed \$50.00. Where this fee is not sufficient to cover the committee's expenses, the remainder of the money must be allocated by council from its budget.

4. Getting the Committee off to a good start

Once the committee is in operation, it is independent in its decision-making. The committee will circulate its applications to the council for comment. It should also look to council's planning documents for policy direction, but the actual decision on any application is that made by the committee members themselves. That is why it is important for council to ensure that the committee has adequate background information before assuming its duties.

Council can do a great deal to get its committee off to a good start:

**providing
planning
documents**

- Municipal council should provide the committee with copies of all planning documents in effect in the municipality. This should include all zoning bylaws, the official plan, interim development policies, if any, and any other relevant documents.

- Council should ensure that the committee receives an orientation program. Arrangements can be made through the Ministry of Housing to have a staff member meet with the committee members and introduce them to their new responsibilities. The Ministry will also provide the committee with an orientation package containing the following materials:

1. The Planning Act.
2. The Rules of Procedure (The Rules of Procedure govern

the operations of a committee of adjustment once it is established). The Rules are prescribed by the Minister under Section 41(12) of The Planning Act and are changed at the Minister's discretion. There are two sets of Rules—one for consents and one for minor variance and non-conforming use applications.

3. Procedural Guidelines on Consent (for committees with consent authority), Ministry of Housing publication.
4. Minor Variances and Non-conforming Uses—Committee of Adjustment Guidelines, Ministry of Housing publication.

5. The ongoing involvement of the Municipal Council

Since planning policy changes can affect committee decisions, council should keep the committee informed of changes to the official plan and zoning bylaws.

Council may also want to review committee decisions to evaluate how they implement municipal planning policies.

Council may not always agree with the committee's decision. If the council feels that the committee's decision is not compatible with municipal policies, it may appeal the decision to the Ontario Municipal Board [*Section 42[13] of The Planning Act*].

Finally, council has an ongoing role in appointing or reappointing committee members as their terms expire [*Section 41[4]*].

For additional information contact the Community Planning Advisory Branch in your area:

Central Region

2nd Floor
47 Sheppard Avenue East
Willowdale (Toronto)
M2N 2Z8
Telephone: (416) 226-1855

South East Region

3rd Floor
244 Rideau Street
Ottawa
K1N 5Y3
Telephone: (613) 566-3801

North East Region

1191 Lansing Ave.
Sudbury
P3A 4C4
Telephone: (705) 560-0120

South West Region

7th Floor
495 Richmond Street
London
M6A 5A9
Telephone: (519) 673-1611

North West Region

435 James Street South
Thunder Bay
P7C 5G6
Telephone: (807) 475-1651

Sample by-law to constitute and appoint a Committee of Adjustment

(Name of municipal corporation)

By-law no. _____

Being a by-law to constitute and appoint a Committee of Adjustment for the Municipality (village, town, township) of _____

Whereas, it is deemed expedient to constitute and appoint a Committee of Adjustment, as provided for in The Planning Act, R.S.O., 1970, section 41.

Now, therefore, the Council of the Corporation of _____

enacts as follows:

(1) That the following persons, not being members of the Council or employees of the Municipality or a local board thereof, shall constitute and are hereby appointed as members of the Committee of Adjustment:

(1) _____ to hold office until January 1, 19____
(this term should be for three years).

(2) _____ to hold office until January 1, 19____
(this term should be for two years).

(3) _____ to hold office until January 1, 19____
(this term should expire the following year).

Read a first and second time this _____ day of _____ 19____.

_____ Clerk _____ Reeve (or Mayor).

Read a third time and finally passed this _____ day of _____ 19____.

_____ Clerk _____ Reeve (or Mayor)

